

Section 7871(e) was added to the statute by The Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330, § 10632(a) (1987). In the legislative history to this provision, the House Ways and Means Committee criticized 1984 Temporary Treasury Regulations interpreting the term essential governmental function in section 7871(c) for including certain activities eligible for Federal funding in that definition. The House Ways and Means Committee stated that the reason for this amendment was that the Committee was concerned about reports that Indian tribal governments were issuing tax-exempt bonds for interests in "commercial and industrial enterprises". The Committee further included the following statement about section 7871(e):

The bill clarifies that, with respect to bonds issued by Indian tribal governments, the term 'essential governmental function' does not include any governmental function that is not customarily performed (and financed with governmental tax-exempt bonds) by State and local governments with general taxing powers. For example, issuance of bonds to finance commercial or industrial facilities (*e.g.*, private rental housing, cement factories, or mirror factories) which bonds technically may not be private activity bonds is not included within the scope of the essential governmental function exception.

Additionally, the committee wishes to stress that only those activities that are customarily financed with governmental bonds (*e.g.*, schools, roads, governmental buildings, etc.) are intended to be within the scope of this exception, notwithstanding that isolated instances of a State or local government issuing bonds for another activity may occur.

H. R. Rep. No. 100-391, at 1139 (1987).

The 1987 Conference Committee adding the limited manufacturing facility provision of section 7871(c)(3)(A), noted that:

A facility which does not qualify as a manufacturing facility for purposes of this provision may nonetheless be financed with tax-exempt bonds issued by a tribal government provided that

the facility satisfies the 'essential governmental function' standard (*i.e.*, the facility is comparable to facilities that are customarily acquired or constructed and operated by States and local governments). For example, a building used for offices for a tribal government itself would be comparable to State or local government office buildings, and therefore, could be financed with tax-exempt bonds. As another example, a lodge owned and operated by a tribal government may be eligible for tax-exempt financing if it is comparable to lodges customarily owned and operated by State park or recreation agencies.

H. R. Rep. No. 100-495, at 1012 n.5 (1987) (Conf. Rep.).

The IRS has become aware of an increasing number of instances in which taxpayers have raised questions about the application of section 7871(e). Accordingly, the Treasury Department and the IRS have determined to seek public comment in advance of issuing proposed regulations in this area.

#### Explanation of Provisions

The Treasury Department and the IRS anticipate that the proposed regulations will provide that for purposes of section 7871(c) and section 7871(e), an activity will be considered an essential governmental function that is customarily performed by State and local governments if: (1) there are numerous State and local governments with general taxing powers that have been conducting the activity and financing it with tax-exempt governmental bonds, (2) State and local governments with general taxing powers have been conducting the activity and financing it with tax-exempt governmental bonds for many years, and (3) the activity is not a commercial or industrial activity. The proposed regulations will further provide that examples of activities customarily performed by State and local governments include, but are not limited to, public works projects such as roads, schools, and government buildings.

#### Request for Comments

Before the notice of proposed rulemaking is issued, consideration will be given

to any written comments that are submitted timely (preferably a signed original and eight (8) copies) to the IRS. All comments will be available for public inspection and copying.

#### Drafting Information

The principal authors of this advance notice of proposed rulemaking are Aviva M. Roth and Timothy L. Jones, Office of the Chief Counsel (Tax-Exempt and Government Entities), however, other personnel from the IRS and Treasury Department participated in its development.

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Services and Enforcement.*

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## Deletions From Cumulative List of Organizations Contributions to Which are Deductible Under Section 170 of the Code

### Announcement 2006-60

The Internal Revenue Service has revoked its determination that the organization listed below qualifies as an organization described in sections 501(c)(3) and 170(c)(2) of the Internal Revenue Code of 1986.

Generally, the Service will not disallow deductions for contributions made to a listed organization on or before the date of announcement in the Internal Revenue Bulletin that an organization no longer qualifies. However, the Service is not precluded from disallowing a deduction for any contributions made after an organization ceases to qualify under section 170(c)(2) if the organization has not timely filed a suit for declaratory judgment under section 7428 and if the contributor (1) had knowledge of the revocation of the ruling or determination letter, (2) was aware that such revocation was imminent, or (3) was in part responsible for or was aware of the activities or omissions of the organization that brought about this revocation.

If on the other hand a suit for declaratory judgment has been timely filed, con-

tributions from individuals and organizations described in section 170(c)(2) that are otherwise allowable will continue to be deductible. Protection under section 7428(c) would begin on September 5, 2006, and would end on the date the court first determines that the organization is not described in section 170(c)(2) as more particularly set forth in section 7428(c)(1). For individual contributors, the maximum deduction protected is \$1,000, with a husband and wife treated as one contributor. This benefit is not extended to any individual, in whole or in part, for the acts or omissions of the organization that were the basis for revocation.

Aylesi M. Bobo Charitable Foundation  
Independence, MO

## Fast Track Settlement for SB/SE Taxpayers

### Announcement 2006-61

#### DESCRIPTION OF SB/SE FAST TRACK SETTLEMENT

This announcement provides an opportunity for small business/self employed taxpayers to use Fast Track Settlement (FTS) to expedite case resolution at the earliest opportunity within the IRS's Small Business/Self Employed organization (SB/SE). The purpose of SB/SE FTS is to enable SB/SE taxpayers that currently have unagreed issues in at least one open year under examination to work together with SB/SE and the Office of Appeals (Appeals) to resolve outstanding disputed issues while the case is still in SB/SE jurisdiction. SB/SE and Appeals will jointly administer the SB/SE FTS process. SB/SE FTS will be used to resolve factual and legal issues and may be initiated at any time after an issue has been fully developed, preferably before the issuance of a 30-day letter or equivalent notice.

SB/SE FTS will be available to taxpayers for a test period of up to two years, beginning upon the date of publication of this announcement. Within this period, there will be an initial focused test of six months during which SB/SE FTS will only be available for taxpayers under examination in Chicago, Illinois; Houston,

Texas; and St. Paul, Minnesota. By the end of this six-month focused test, SB/SE and Appeals will evaluate the program, consider necessary adjustments and determine whether to continue testing SB/SE FTS for the remaining eighteen months of the test period. If continued, SB/SE FTS will be available to taxpayers nationwide. Upon completion of the two-year test period, SB/SE and Appeals will again evaluate the program, consider necessary adjustments, and determine whether to make the program permanent.

#### RELIANCE ON AND DIFFERENCES FROM LMSB FAST TRACK SETTLEMENT

The procedures for using FTS for SB/SE taxpayers rely on the provisions of Revenue Procedure 2003-40, 2003-1 C.B. 1044, which implemented a Large and Mid-Size Business Fast Track Settlement Dispute Resolution Program and allows the use of Appeals settlement authority in SB/SE cases. See section 3.02 of Rev. Proc. 2003-40.

During the two-year test period, SB/SE FTS extends the provisions of the LMSB Fast Track program to SB/SE cases and provides for direct oversight of the program by SB/SE and Appeals. SB/SE FTS therefore involves procedures almost identical to the LMSB FTS procedures described in Rev. Proc. 2003-40. The key differences between the LMSB and SB/SE FTS procedures are as follows:

- The SB/SE Group Manager or designee fulfills the duties of the LMSB Team manager, as described in Rev. Proc. 2003-40;
- SB/SE Group Managers and Appeals Team Managers select and manage cases eligible for SB/SE FTS; and
- The SB/SE FTS process is designed to be completed within 60 days of acceptance of the SB/SE-Appeals FTS Application.

#### CASE ELIGIBILITY AND EXCLUSIONS

Subject to the limitations set forth below, SB/SE FTS is generally available for cases under the jurisdiction of the SB/SE Division if:

- Issues are fully developed;
- The taxpayer has stated a position in writing (or filed a small case request for cases in which the total amount for any tax period is less than \$25,000, as described in Publication 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree*); and
- There are a limited number of unagreed issues.

SB/SE FTS is *not* available for:

- Collection Appeals Program, Collection Due Process, Offer-In-Compromise and Trust Fund Recovery cases, except as provided in any guidance issued by the Service;
- Correspondence examination cases worked solely in a Campus/Service Center site;
- Cases in which the taxpayer has failed to respond to Service communications and no documentation has been previously submitted for consideration by Compliance;
- Tax Equity & Fiscal Responsibility Act (TEFRA) partnership cases;
- Issues outside SB/SE jurisdiction, except as provided below;
- Issues designated for litigation;
- Issues under consideration for designation for litigation;
- Issues for which the taxpayer has submitted a request for competent authority assistance;
- Issues for which the taxpayer has requested the simultaneous Appeal/Competent Authority procedure described in section 8 of Rev. Proc. 2002-52, 2002-2 C.B. 242, or the corresponding provision of any successor guidance;
- Frivolous issues, such as, but not limited to, those identified in Rev. Proc. 2006-2, 2006-1 I.R.B. 89, or any successor guidance;
- "Whipsaw" issues, *i.e.*, issues for which resolution with respect to one